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FILED
SEP 28 1944
CHARLES ELMORE CROPLEY
CLERK

United States of America
In the

# Supreme Court of the United States

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No. 266

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WILLIAM ALFRED LUCKING and
MARGARET HOLMES DAVIS,
Petitioners and Plaintiffs Below,
vs.
FIRST NATIONAL BANK-DETROIT,
a National Banking Corporation, and
NATIONAL BANK OF DETROIT,
a National Banking Corporation,
Respondents and Defendants Below

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## PETITIONERS' REPLY BRIEF

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## PETITIONERS' REPLY BRIEF

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### A.

The Chief Ground urged for Writ of Certiorari

is that the cause was not removable from the State Court, because plaintiffs' complaint did not show a Federal Question Involved, and therefore, the resident

defendants had no right to remove and the judgment of dismissal was without jurisdiction—on the authority of

*Gully v. First National Bank,* 299 U. S. 109.

**B.**

Defendant, National Bank of Detroit, one of the *removing resident* defendants—does not argue the question of removability at all—in its brief.

**C.**

The other *resident* defendant, First National Bank-Detroit (against which no relief was asked—and which was dismissed by Petitioners from the case (R. 60)),

seeks to sustain the District Court's order of April 20, 1943 (R. 59), refusing a remand to the State Court

by claiming that a Federal Question is raised by Petitioners' complaint in the State Court—because

> "their action basically is one to recover a claimed asset of a closed national bank and hence arises under the laws of the United States."
>
> (Resident Defendant's Brief, p. 11)

**D.**

**THE DECISIVE QUESTION—**

Is whether *resident* defendants have a Right of Removal in all suits to recover an asset belonging to Creditors of Stockholders of a closed national bank?

To which question petitioners respectfully beg to answer "no"—on the authority of

*Puerto Rico v. Russell & Co.*, 288 U. S. 476;
*American National Bank v. Ames*, 169 Va. 711, cert. denied 304 U. S. 577.

In *Puerto Rico v. Russell & Co., supra,* this Court found that the plaintiff's right to sue "is derived from federal law" and further that the property assessed was "obtained under federal statute."

(228 U. S. at p. 483)

But this Honorable Court

HELD no Federal Question was involved and that the Cause must be remanded to

"the Insular Court from which it was removed."

And in *American National Bank v. Ames, supra,* there was involved a suit by stockholders of a Closed National Bank for an accounting from a going National Bank, which had "purchased" the assets of the Closed National Bank.

It was held not to be a suit for "winding up" the affairs of a National Bank, further that

the Appointment of a National Bank Receiver by the Comptroller of the Currency did not deprive the State Court of jurisdiction to interpret the contract of the defendant going bank and require an accounting of its sales of purchased assets.

It is very significant that this Court's opinion in the *Gully v. Bank, supra,* in 299 U. S. cites its opinion in *Puerto Rico v. Russell & Co., supra*—as decisive against the presence of a Federal Question.

**IN CONCLUSION—**

Petitioners respectfully submit that their Complaint asking an accounting from a purchaser, going National Bank, does not, in the remotest way, raise a Federal Question.

The Petitioners' action to recover profits on a re-sale of assets by the *resident* defendant, National Bank of Detroit,

presents a simple State of Michigan Contract accounting question, a decision of which can in no possible way raise a Federal Question.

In *American Co. v. Layne Co.*, 241 U. S. at 260, it was said:

> "A suit arises under the law that creates the cause of action."

It is therefore respectfully Submitted that this Cause was not removable from the State Court

and that no jurisdiction existed in the District Court of the United States to dismiss the Petitioners' accounting action, in which the two defendants, selling and purchasing National Banks, were residents of Michigan.

*It is only a non-resident defendant,* who may, under the Federal Removal Statute, remove a cause from the State Courts on the ground that it is one for the "winding up" of the affairs of a National Bank.

And in *American National Bank v. Ames, supra,* there was involved precisely the same action as the one at bar—and it was held not to be one for a "winding up" of the affairs of a National Bank.

Most Respectfully Submitted,

WILLIAM ALFRED LUCKING,
*Attorney for Petitioners.*